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ATTORNEYS FOR DEFENDANT  
KENNETH G. HOWLING

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

|   |   |                         |
|---|---|-------------------------|
| -----                                     | X |                         |
|   | : |                         |
| SECURITIES AND EXCHANGE COMMISSION,       | : |                         |
|   | : |                         |
| Plaintiff,                                | : | 08 Civ. 02979 (LAK)     |
|   | : | ECF CASE                |
| - against -                               | : |                         |
|   | : | <b>NOTICE OF MOTION</b> |
| BIOVAIL CORPORATION, EUGENE N. MELNYK,    | : |                         |
| BRIAN CROMBIE, JOHN MISZUK and KENNETH G. | : |                         |
| HOWLING,                                  | : |                         |
|   | : |                         |
| Defendants.                               | : |                         |
| -----                                     | X |                         |

PLEASE TAKE NOTICE that upon the accompanying Declaration of Nazar Altun, dated August 22, 2008, the exhibits annexed thereto, the accompanying memorandum of law, and upon all prior pleadings and proceedings had herein, defendant, Kenneth G. Howling, will move this Court before the Honorable Lewis A. Kaplan, at the Daniel Patrick Moynihan United States Courthouse of the Southern District of New York, 500 Pearl Street, New York, New York, on a date and time to be determined by the Court, for an order pursuant to Rules 9(b) and 12(b)(6) of

the Federal Rules of Civil Procedure dismissing the Second Claim in the Amended Complaint, dated July 31, 2008, and for such other and further relief as the Court deems just and proper.

Dated: New York, New York  
August 22, 2008

FRIED, FRANK, HARRIS, SHRIVER &  
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By: /s/ Michael B. de Leeuw

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